

**Uniform Law Commission Drafting Committee on Telehealth**  
**Draft Text for Discussion at March 26, 2021 Meeting**  
March 19, 2021

This document provides an initial draft of select sections of what will eventually become the Committee's proposed text for a uniform or model act on telehealth. The meeting on March 26, 2021, will focus on this draft. A supplemental background memo provides context for the provisions that have been included in this draft, as well as select examples taken from existing statutes and current bills.

**{Title of Act}**

**SECTION 1. DEFINITIONS.** In this [Act]:

(1) "Telehealth" means the use of synchronous or asynchronous telecommunication technology to deliver health care services to a patient at a different physical location than the health care practitioner.

(2) "Practitioner" means an individual who is licensed, certified, or otherwise authorized by law, including through the registration process established by this [Chapter], to provide health care services within this state.

(3) "Out-of-state practitioner" means an individual who is licensed[, certified, or otherwise authorized by law] to provide health care services in another state, possession, or territory of the United States, or the District of Columbia.

(4) "Registered practitioner" means an out-of-state practitioner who has been registered under this [Act].

**SECTION 2. STANDARD OF CARE.**

(a) A practitioner may provide health care services via telehealth, if doing so is consistent with the standard of care and the practitioner's scope of practice, as defined by the law of this state, and is not otherwise prohibited by law.

(b) A practitioner may establish a practitioner-patient relationship via telehealth.

(c) The standard of care for a practitioner who delivers a health care service via telehealth is the same as the standard of care for a practitioner who provides a comparable health care service in person. Professional practice standards and law applicable to the delivery of health care services, including but not limited to standards and law related to identity verification, documentation, informed consent, confidentiality and privacy, and security, apply to telehealth in the same manner that they apply to the delivery of in-person services.

*Option 1:*

(d) A state board or agency that regulates practitioners may not promulgate rules or regulations that establish a separate standard of care for telehealth or limit the form of telecommunication technology that may be used for telehealth, unless authorized by this [act].

*Option 2:*

(d) A state board or agency that regulates practitioners may not promulgate rules or regulations that require in-person delivery of health care services or limit the form of telecommunication technology that may be used for telehealth, unless authorized by this [act].

### **SECTION 3. LIMITS ON THE USE OF TELEHEALTH.**

#### *Option 3:*

[(a) A state board or agency that regulates practitioners may promulgate a rule or regulation that prohibits a practitioner from prescribing, or limits the practitioner's ability to prescribe, controlled substances for the treatment of *[chronic]* pain when the practitioner's encounters with a patient have occurred solely or predominantly through telehealth.]

#### *Option 4:*

[(a) A practitioner may not prescribe *[an opiate]* *[scheduled drugs]* *[controlled substances]* for the treatment of *[chronic]* pain *[through telehealth]* *[when the practitioner's encounters with the patient have occurred solely through telehealth]* *[when the practitioner's encounters with the patient have occurred solely through asynchronous telecommunication technology]*, unless:

(1) the *[opiate]* *[scheduled drug]* *[controlled substance]* has been approved by the federal Food and Drug Administration for use as part of a medication assisted treatment program for opioid use disorder; or

(2) at the time of the prescription, the patient is receiving inpatient treatment at a licensed health care facility, resides in a nursing home, or is receiving hospice services.]

(b) A practitioner who prescribes controlled substances is subject to any applicable requirement, limitation, or prohibition in federal or state law relating to the prescription of controlled substances, including any reporting requirements in this state.

### **SECTION 4. REGISTRATION OF OUT-OF-STATE PRACTITIONERS.**

(a) An out-of-state practitioner may provide telehealth services to a patient located within this state if the practitioner:

(1) obtains the appropriate license [or certification] within this state, or is otherwise authorized to provide care within this state, including through any multistate compact of which this state is a member;

(2) registers with the board responsible for licensing or certifying practitioners who provide the type of services the out-of-state practitioner provides;

(3) provides services in consultation with a practitioner licensed within this state; or

(4) is located outside this state, does not open an office in this state, and

(A) has a previously established practitioner-patient relationship with the patient;

(B) is providing telehealth services as follow-up care to treatment previously provided in-person in the practitioner's state of licensure; and

(C) the follow-up care is infrequent or episodic and occurs no later than one year following the previously provided in-person treatment.

(b) An out-of-state practitioner may not apply to register under this [section] if the practitioner's license to provide health care services is subject to a pending disciplinary investigation or action or has been revoked in any state or jurisdiction.

(c) A board responsible for licensing [or certifying] practitioners shall register an out-of-state practitioner not licensed[, certified,] or otherwise authorized to provide the practitioner's services within the state if the practitioner:

(1) completes an application in the format prescribed by the board;

(2) is licensed with an active, unencumbered license that is issued by another state, possession, or territory of the United States, or the District of Columbia, and that is substantially similar to a license issued by this state;

(3) has not been the subject of disciplinary action relating to his or her license during the 5-year period immediately prior to the submission of the application;

(4) identifies a duly appointed registered agent for service of process in this state as required by the board;

(5) demonstrates to the board that the practitioner has obtained professional liability insurance that includes coverage for telehealth services provided to patients located in this state in an amount equal to or greater than the requirements for a licensed practitioner providing comparable services within the state; and

(6) Pays the specified registration fee.

(d) The board shall ensure that information about each registrant is made available to the public through its website.

(e) A registered practitioner:

(1) shall notify the appropriate board of restrictions placed on the practitioner's license to practice, or any disciplinary action taken or pending against the practitioner, in any state or jurisdiction. The notification must be provided within 5 business days after the restriction is placed or disciplinary action is initiated or taken.

(2) shall maintain professional liability insurance that includes coverage for telehealth services provided to patients located in this state, in an amount equal to or greater than the requirements for a licensed practitioner providing comparable services within the state.

(3) may not open an office in this state and may not provide in-person health care services to patients located in this state.

(f) The board may take disciplinary action against a registered practitioner who:

(1) fails to notify the applicable board of any adverse actions taken against the practitioner's license as required under [paragraph] (c)(1).

(2) has restrictions placed on or disciplinary action taken against the practitioner's license in any state or jurisdiction.

(3) violates any requirements of this section.

(4) commits any act that constitutes grounds for disciplinary action under the practice act applicable to a licensed practitioner who provides comparable services within this state.

(g) Disciplinary action taken by a board against a registered practitioner may include suspension or revocation of the provider's registration or any other action that the board might take against a licensed practitioner who provides comparable services within this state.

(h) For the purposes of this section, any act that constitutes the delivery of health care services is deemed to occur at the place where the patient is located at the time the act is performed or in the patient's county of residence. Venue for a civil or administrative action initiated by the appropriate board or agency, or a patient who receives telehealth services from a registered practitioner, may be located in the patient's county of residence or *[any other appropriate location, such as the county in which the state capital is located]*.

(i) A board may charge a registration fee that reflects the expected incremental costs of maintaining the registry and taking disciplinary action against or fulfilling other obligations with respect to registered providers.

(j) A board may adopt rules to administer this section.